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C.I.A. DRAFTS A BILL TO GUARD SECRETS

It Gives White House a Plan on Disclosure Short of Spying

By STUART TAYLOR Jr.

Special to The New York Times

WASHINGTON, March 19 — The Central Intelligence Agency has sent the White House a proposal to make it a crime for Government employees to disclose national secrets without authorization, Administration officials said today.

The proposed legislation would authorize prosecution of Government employees or former employees who "willfully" disclosed "any classified information," with certain narrow exceptions, to reporters or others outside the Government. The maximum penalty would be five years in prison and a \$25,000 fine.

Although the Justice Department takes the position that such disclosures already violate criminal laws barring espionage and theft of Government property, that interpretation is in dispute in a pending court case.

The purpose of the intelligence agency proposal is apparently to persuade Congress to establish beyond doubt that unauthorized disclosures of classified information by Government employees are crimes.

The proposal does not appear to authorize prosecution of journalists or others outside the Government who publish secrets that are disclosed to them. However, it might create a basis for seeking to force journalists to disclose their sources.

The proposal also specifies that a defendant could avoid conviction by establishing that the information had not been obtained through the defendant's Government service, that it had already been published or that it was not "properly classified."

Information is "properly classified," the proposed law states, if disclosure "reasonably could be expected to damage the national security."

Sent with the signature of William J. Casey, Director of Central Intelligence, the proposal is being reviewed by the Justice, State, Defense and other departments. No decision has been reached by the officials.

Kathy Pherson, a spokesman for the intelligence agency, said the proposal, a copy of which was obtained by The New York Times, had been designated secret by the agency's legislative branch on the ground that its disclosure while it is still being discussed in the Administration would be "inappropriate" and "premature."

George Lauder, chief spokesman for the agency, declined to confirm whether the proposal had been classified or to discuss whether its disclosure would be considered a crime under the proposed legislation.

"We are not going to talk about it," Mr. Lauder said repeatedly, finally adding, "There is no reason we have to make a comment about anything."

One of Several Such Steps

The proposal for criminal legislation is one of several controversial steps the Administration has taken or considered to combat disclosures, including a Presidential order, later cut back somewhat, that provided for lifelong censorship of certain officials and greater use of polygraph machines, or lie detectors, to trace the source of unauthorized disclosures.

Most of those measures, like the new proposal, have been aimed primarily at officials who make disclosures rather than the journalists who publish them.

The Justice Department won a pre-trial ruling last week from Federal District Judge Joseph H. Young of Baltimore that it was a crime for officials to give military secrets to reporters or others without authorization.

Judge Supports View

Rejecting a motion to dismiss a criminal prosecution, Judge Young adopted the Justice Department's view that such disclosures violated the general, broadly worded criminal laws barring espionage and theft of Government property.

That interpretation has long been disputed by civil libertarians, journalists and others who say Congress intended the espionage laws to apply only to foreign spies, not to disclosures to reporters. The issue has never been squarely considered by an appellate court.

Lawyers for Samuel Loring Morison, a civilian employee of the Navy who is the defendant in the case, say he will appeal the judge's ruling if convicted at his trial, set to begin July 15. He is charged under the espionage and theft laws with giving secret intelligence photographs to a British military

The Central Intelligence Agency's proposal is accompanied by an analysis stating that with certain narrow exceptions, "willful unauthorized disclosures of classified information by those entrusted with it by the Government are not per se offenses under existing Federal criminal statutes."

Conflict in Their Positions

The analysis appears to contradict the position of the Justice Department and Judge Young in the Morison case.

The C.I.A.'s draft of the new criminal law is the first such detailed legislative proposal known to have been advanced by a high-level Reagan Administration official. In 1983, a committee of lower-level Administration lawyers recommended somewhat similar legislation, but the proposal was never relayed to Congress. In the Carter Administration, proposals were circulated but never sent to Congress.

Reagan Administration lawyers, Congressional aides and others said in interviews that the proposal raised thorny issues, such as whether it should be a crime for journalists to publish Government secrets.

They said even a bill directed only at Government disclosers would create controversy in Congress, which has in past decades refused to enact similar proposals lest public debate on military issues be stifled.

It Appears In Another Bill

It is entirely possible, the officials said, that the intelligence agency's "trial balloon," as one called it, would be shot down by other Government agencies and never reach Congress.

A similar bill to make it a crime for a Government employee to disclose secret information to anyone not authorized to receive it was introduced in a broader intelligence bill in February by Representative Bob Stump of Arizona, the senior Republican on the House Intelligence Committee.

The Administration has taken no position on that bill so far.

In the early 1970's the Nixon Administration proposed legislation making it clear that unauthorized disclosures of secret information to reporters were crimes, as part of a comprehensive overhaul of the Federal Criminal Code. The secrecy legislation died amid an outcry from journalists and civil libertarians.